

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Joseph M. Asher et al.
Application No. : 10/687,302 Confirmation No. : 7925
Filed : October 14, 2003
For : SYSTEM AND METHOD FOR GENERATING
CUSTOMIZED ODDS BET FOR AN EVENT
Group Art Unit : 3714
Examiner : Christian E. Rendon

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants request review of the Final Rejection mailed May 13, 2008 in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets.

REMARKS

For the following reasons, Applicants request review of the Final Rejection mailed May 13, 2008 in the present application.

I. THE EXAMINER FAILS TO ESTABLISH A PRIMA FACIE CASE OF ANTICIPATION

At paragraphs 1-2, pages 3-4, of the Office Action, the Examiner rejects the claims, including independent apparatus claim **1**, under 35 U.S.C. § 102(b) as being anticipated by Brenner et al., U.S. patent 5,830,068 (hereinafter Brenner).

Independent claim **1** recites in part:

An apparatus comprising at least one processor having instructions associated therewith that when executed make the processor operable to:

a) receive from a bettor a wager on an event at desired odds, ...;

c) determine that a combination of at least the first odds [for a first betting option] and the second odds [for a second betting option] at least approximates the desired odds; and

*d) based at least in part on determining that the combination of at least the first odds and the second odds at least approximates the desired odds, establish for the bettor at least:
a first bet on the first betting option, and
a second bet on the second betting option.*

In rejecting claim 1, the Examiner asserts in part:

2. Regarding claims 1, 12-14, 19, 23-25, 35-36, 46-56, 60-64 & 67-69, the system offers a user the ability to select from a group of participants or runners (col. 4, lines 32-34) for an event. When a user chooses to place an **Exacta, Quinella, Trifecta or Daily Double**, he or she will have to create a subset of participants that will all finish in one of the winning positions. Therefore a gambler has the power to customize the odds of his/her bet by choosing between a 'combination bet' such as: **Exacta, Quinella, Trifecta, Daily Double** or multiple single bets such as: **Place** bets for each horse (col. 12, line 31) when the risk level is too high or more than the desired odds. The Examiner views a gambler's decision of placing multiple single bets over a riskier 'combination bet' as making a first and second betting option to achieve the desired odds (col. 2, lines 57-59) based on the combination of the first and second odds.

Office Action, page 4.

In rejecting claim 1, the Examiner never asserts that Brenner discloses an apparatus as recited by claim 1 and in particular, never shows how each and every element of claim 1 is found in Brenner. Rather, the Examiner merely makes conclusory assertions as to how a gambler might use the system of Brenner. Nonetheless, such alleged use of the Brenner system is also not claim 1.

MPEP § 2131 reads as follows:

A claim is anticipated only if **each and every element as set forth in the claim** is found, either expressly or inherently described, in a single prior art reference.... The identical invention must be shown in **as complete detail as is contained in the ... claim**.

MPEP § 2131 (internal quotes emitted) (bold emphasis added).

Because the Examiner fails to show that "each and every element" as set forth in claim 1 is found in Brenner, the Examiner fails to establish a *prima facie* case of anticipation of at least claim 1.

II. CONCLUSION

Because the Examiner fails to establish a *prima facie* case of anticipation of at least claim 1, withdrawal of the rejection is respectfully requested.

Respectfully submitted,

/Glen R. Farbanish/

November 12, 2008

Date

Glen R. Farbanish
Reg. No. 50,561
(212) 294-7733/phone
(212) 308-7537/fax